

EXHIBIT NN

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IMPOSSIBLE FOODS INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

IMPOSSIBLE FOODS INC., a Delaware
corporation,

Plaintiff/Counter-Defendant

v.

IMPOSSIBLE LLC, a Texas limited liability
company, and JOEL RUNYON,

Defendants/Counter-Plaintiffs.

Case No. 5:21-cv-02419-BLF (SVK)

**IMPOSSIBLE FOODS INC.'S THIRD
SUPPLEMENTAL OBJECTIONS AND
RESPONSES TO IMPOSSIBLE LLC'S
SECOND SET OF INTERROGATORIES**

Judge: Hon. Beth Labson Freeman

PROPOUNDING PARTY:

Defendant/Counter-Plaintiff IMPOSSIBLE
LLC

RESPONDING PARTY:

Plaintiff/Counter-Defendant IMPOSSIBLE
FOODS

SET NO:

TWO

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, Plaintiff/Counter-Defendant Impossible Foods objects and responds to the “Second Set of Interrogatories” (the “Interrogatories”) served by Defendant/Counter-Plaintiff Impossible LLC on Impossible Foods on September 19, 2024.

OBJECTIONS TO DEFINITIONS AND INSTRUCTIONS

Impossible Foods asserts the following objections with respect to each instruction, definition, and Interrogatory:

1. Impossible Foods objects to the definition of “Plaintiff, you, and your” because such definitions could be interpreted to seek information not within the possession, custody, or control of Impossible Foods, and the definition could include vague and undefined “affiliate[s].” Impossible Foods’s responses and objections are made on behalf of Impossible Foods, and its searches will be limited to information within the possession, custody, or control of Impossible Foods.

2. Impossible Foods objects to the definition of “Plaintiff’s Marks” because it includes 49 trademark registrations and applications, many of which are either not an IMPOSSIBLE-formative mark (e.g., U.S. Reg. No. 5,381,475) or otherwise are not relevant to any claim or defense in this action. Impossible Foods further objects to this definition because it imposes undue burden and expense on Impossible Foods by requiring it to respond to interrogatories concerning 49 registrations and applications.

3. Impossible Foods objects to the definition of “Defendant” as too narrow. Impossible Foods interprets “Defendant” to include Impossible LLC (f/k/a Impossible X LLC) and its agents, predecessors in interest, successors in interest, and any other person or entity acting on its behalf or subject to its control, including Joel Runyon and Impossible HQ.

4. Impossible Foods objects to the definition of “Defendant’s Marks” because whether “Defendant” has “common law rights” in a purported “family of marks” is information that is not within Impossible Foods’s possession, custody, or control. Impossible Foods will respond only with respect to the trademark registrations referenced in the definition.

5. Impossible Foods objects to, and will not comply with, Instruction ¶ 1 because it

1 imposes an undue burden on Impossible Foods and is disproportional to the needs of the case.
2 Defendant has construed “Plaintiff’s Marks” to include 49 trademark registrations and
3 applications, many of which cover goods and services not relevant to any claim or defense
4 asserted in this action, and requiring Impossible Foods to provide different answers for “different
5 types of goods or services” within those 49 registrations and applications is disproportional to the
6 needs of the case.

7 6. Impossible Foods objects to, and will not comply with, Instruction ¶ 2 because it
8 imposes an undue burden on Impossible Foods and is disproportional to the needs of the case.
9 Defendant has construed “Plaintiff’s Marks” to include 49 trademark registrations and
10 applications, many of which cover goods and services not relevant to any claim or defense
11 asserted in this action, and requiring Impossible Foods to provide different answers for “different
12 types of use” of marks reflected in 49 registrations and applications is disproportional to the needs
13 of the case.

14 7. Impossible Foods objects to, and will not comply with, Instruction ¶ 3, because it
15 imposes an undue burden on Impossible Foods and is disproportional to the needs of the case.
16 Impossible Foods is unable to determine whether an answer “differs as between different
17 persons”—an exceedingly vague phrase—nor would such differentiation be relevant to any claim
18 or defense.

19 8. Impossible Foods objects to, and will not comply with, Instruction ¶ 4, because it
20 imposes an obligation beyond what is required by the Federal Rules, would impose an undue
21 burden on Impossible Foods, and is disproportional to the needs of the case.

22 9. Impossible Foods objects to, and will not comply with, Instruction ¶ 5, because it
23 exceeds the requirements for a privilege log in this District. Impossible Foods will provide a
24 privilege log, if required, that complies with the law in this District.

25 **RESPONSES AND OBJECTIONS TO INTERROGATORIES**

26 **INTERROGATORY NO. 10**

27 Provide the complete basis for Plaintiff’s allegation that its asserted trademarks are well
28 known to consumers.

RESPONSE:

Impossible Foods objects to this Interrogatory on the ground that it calls for a legal conclusion. Impossible Foods further objects to this Interrogatory on the ground that it is premature as discovery is ongoing, and to the extent it calls for expert testimony. Impossible Foods also objects to this Interrogatory to the extent it seeks information protected from discovery by the attorney-client privilege and the work product doctrine.

In accordance with the foregoing objections, Impossible Foods has used its IMPOSSIBLE mark regularly and continuously since as early as 2015 in connection with edible products, and owns common law and federally registered trademark rights, including incontestable registrations, in numerous IMPOSSIBLE-formative marks. *See* Plaintiff's Second Amended Complaint ¶¶ 5, 34, 49, Ex. A. Moreover, it has become well-known in the United States because, *inter alia*, of the commercial success of Impossible Foods's products and the significant investment it has dedicated to building and promoting the brand. Impossible Foods's signature products—the IMPOSSIBLE BURGER and other plant-based meat substitutes—are widely available in stores across the United States, including Albertsons, Kroger, Safeway, Walmart, Target, Wegmans, Costco, and Trader Joe's; restaurants, including Burger King (Impossible Whopper), Red Robin, Starbucks, Hard Rock Cafe, Cheesecake Factory, and Applebee's; and online retailers, including Walmart.com, Target.com, Amazon.com, and social media pages.

Additionally, as a pioneer in the field of plant-based substitutes for meat products, Plaintiff's IMPOSSIBLE mark has been the subject of considerable unsolicited media coverage, including being featured in prominent national news publications such as *The New York Times*, *The Los Angeles Times*, *The Wall Street Journal*, *The Chicago Tribune*, *San Jose Mercury News*, *San Francisco Chronicle*, *Bloomberg*, *Reuters*, *FORTUNE*, *Forbes*, *Time*, *USA Today*, *Business Insider*, *WIRED*, *The Verge*, *Vogue*, *Delish*, *Eater*, *The Guardian*, *Vox*, *CNBC*, *The New Yorker*, *Engadget*, *MIT Technology Review*, *TechCrunch*, and *FastCompany* as well as on CNN, MSNBC, NPR, Fox Business, and other cable networks. Not only has Plaintiff's IMPOSSIBLE mark become well-known over the past decade because of the extraordinary commercial success and widespread unsolicited media attention, but Impossible Foods has also invested millions of dollars

1 in building and promoting its brand, and revenue of its edible products has exceeded millions of
2 dollars annually in the United States for the past several years.

3 As a result of Impossible Foods's widespread, continuous, and substantially exclusive use
4 of its IMPOSSIBLE mark in connection with edible products, the mark enjoys wide public
5 acceptance and exclusive association with Impossible Foods and has been recognized widely and
6 favorably by the public in the United States as an indicator of the source of Impossible Foods's
7 edible products.

8 **INTERROGATORY NO. 11**

9 Identify all channels of trade in which Plaintiff's and Defendant's uses of IMPOSSIBLE
10 on products and services have overlapped.

11 **RESPONSE:**

12 Impossible Foods objects to this Interrogatory on the ground that it is overbroad and does
13 not describe the information sought with reasonable particularity. Instead, the Interrogatory simply
14 lists a broad topic and demands "all" information for the broad topic. Impossible Foods also
15 objects to this Interrogatory on the ground that it calls for a legal conclusion. Impossible Foods
16 further objects to this Interrogatory on the ground that it is premature as discovery is ongoing and
17 Impossible Foods may become aware of additional overlapping channels of trade through
18 documents or information currently in Defendants' possession, custody, and control. Impossible
19 Foods also objects to this Interrogatory on the ground that it is premature to the extent it calls for
20 expert testimony. Impossible Foods further objects to this Interrogatory to the extent it seeks
21 information protected from discovery by the attorney-client privilege and the work product
22 doctrine. Impossible Foods also objects to this Interrogatory because it seeks information in the
23 public domain and equally available to Defendants or their counsel and/or already within
24 Defendants' or their counsel's knowledge, possession, custody, or control.

25 In accordance with these objections, Impossible Foods offers, promotes, advertises, or sells
26 its edible products in connection with its IMPOSSIBLE mark through various channels, such as in
27 stores across the United States, including Albertsons, Kroger, Safeway, Walmart, Target,
28 Wegmans, Costco, and Trader Joe's; restaurants, including Burger King (Impossible Whopper),

1 Red Robin, Starbucks, Hard Rock Cafe, Cheesecake Factory, and Applebee's; and online retailers,
2 including Walmart.com, Target.com, Amazon.com, and social media pages.

3 **FIRST SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 11:**

4 In accordance with the foregoing objections, the channels that Impossible Foods offers,
5 promotes, advertises, or sells its edible products in connection with its IMPOSSIBLE mark as
6 identified above overlap with channels that Defendants offer, promote, advertise, or sell their
7 edible products in connection with their IMPOSSIBLE-formative marks, including grocery stores
8 such as Jubilee Grocery, online retailers such as Walmart.com and Amazon.com, and social media
9 platforms. See Defendants' Resp. to Interr. No. 14 ("The main outlets through which Impossible's
10 goods and services are promoted and sold are Impossible's own websites, social media (including
11 Facebook, Instagram, Twitter, and TikTok), and Amazon.com.")).

12 **INTERROGATORY NO. 12**

13 Provide the complete bases for Plaintiff's allegations that Defendant's use of
14 IMPOSSIBLE-formative marks is likely to cause confusion with senior trademark rights owned
15 by Plaintiff.

16 **RESPONSE:**

17 Impossible Foods objects to this Interrogatory on the ground that it calls for a legal
18 conclusion. Impossible Foods further objects to this Interrogatory on the ground that it is
19 premature as discovery is ongoing, and to the extent it calls for expert testimony. Impossible
20 Foods also objects to this Interrogatory on the ground that it seeks information protected from
21 discovery by the attorney-client privilege and the work product doctrine. Impossible Foods further
22 objects to this Interrogatory on the ground that "senior trademark rights" is vague and ambiguous.
23 Impossible Foods understands "senior trademark rights" to mean Impossible Foods's trademark
24 rights established prior to Defendants' trademark rights. Impossible Foods also objects to this
25 Interrogatory because it seeks information in the public domain and equally available to
26 Defendants or their counsel and/or already within Defendants' or their counsel's knowledge,
27 possession, custody, or control.

28 In accordance with these objections, Defendants' use of IMPOSSIBLE-formative marks in

1 connection with sleep and energy powders and other edible products is likely to cause confusion
2 with Impossible Foods's use of Plaintiff's Marks with edible products when analyzed under the
3 *Sleekcraft* factors. *See AMF Inc. v. Sleekcraft Boats*, 599 F.2d 341 (9th Cir. 1979).

4 Impossible Foods owns common law and federally registered trademark rights, including
5 incontestable registrations, in numerous IMPOSSIBLE-formative marks. *See* Plaintiff's Second
6 Amended Complaint ¶¶ 5, 34, 49, Ex. A. Impossible Foods has used its Marks with edible
7 products regularly and continuously since as early as 2015, before any trademark use by
8 Defendants for edible products.

9 Defendants' use of IMPOSSIBLE-formative marks with edible products, including sleep
10 and energy powders, is likely to cause confusion with Impossible Foods's use of Plaintiff's Marks
11 with edible products because Plaintiff's Marks are strong and both parties advertise and sell edible
12 products with IMPOSSIBLE-formative marks through overlapping channels.

13 **FIRST SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 12:**

14 Impossible Foods supplements its prior response as follows: Defendants' use of
15 IMPOSSIBLE-formative marks in connection with sleep and energy powders and other edible
16 products ("Accused Products") is likely to cause confusion with Impossible Foods's use of
17 Plaintiff's Marks with edible products when analyzed under the *Sleekcraft* factors. *See AMF Inc.*
18 *v. Sleekcraft Boats*, 599 F.2d 341 (9th Cir. 1979). Impossible Foods owns common law and
19 federally registered trademark rights, including incontestable registrations, in numerous
20 IMPOSSIBLE-formative marks. *See* Plaintiff's Second Amended Complaint ¶¶ 5, 34, 49, Ex. A.
21 Impossible Foods has used its Marks with edible products regularly and continuously since as
22 early as 2015, before any trademark use of "Impossible" by Defendants for edible products.

23 Plaintiff's Marks are arbitrary and enjoy a high degree of commercial strength. Impossible
24 Foods has used Plaintiff's Marks over the past decade with edible products, Plaintiff's Marks are
25 well-known due to substantial advertising and promotion of Plaintiff's Marks by Impossible
26 Foods, the commercial success as measured by the volume of sales of IMPOSSIBLE-branded
27 products, and widespread unsolicited media attention.

28 Defendants' use of and planned use of IMPOSSIBLE-formative marks with the Accused

1 Products is likely to cause confusion with Impossible Foods's use of Plaintiff's Marks with edible
2 products because Impossible Foods's edible products and Defendants' Accused Products are
3 closely related; Defendants' use of IMPOSSIBLE-formative marks with the Accused Products is
4 similar in overall commercial impression to Impossible Foods's use of Plaintiff's Marks with
5 edible products; and the channels through which Impossible Foods advertises and sells its edible
6 products overlap with the channels that Defendants advertise and sell or plan to advertise and sell
7 the Accused Products.

8 **INTERROGATORY NO. 13**

9 Describe each act or omission by Defendant or Joel Runyon that Plaintiff contends
10 demonstrates willful infringement.

11 **RESPONSE:**

12 Impossible Foods objects to this Interrogatory on the ground that it calls for a legal
13 conclusion. Impossible Foods further objects to this Interrogatory on the ground that it is
14 premature as discovery is ongoing and Impossible Foods may become aware of additional acts or
15 omissions through documents or information currently in Defendants' possession, custody, and
16 control. Impossible Foods also objects to this Interrogatory on the ground that it is premature as it
17 calls for expert testimony. Impossible Foods further objects to this Interrogatory on the ground
18 that it seeks information protected from discovery by the attorney-client privilege and the work
19 product doctrine. Impossible Foods also objects to this Interrogatory because it seeks information
20 in the public domain and equally available to Defendants or their counsel and/or already within
21 Defendants' or their counsel's knowledge, possession, custody, or control.

22 In accordance with these objections, Impossible Foods states that Defendants, including
23 Mr. Runyon, acted affirmatively or by way of omission in ways that demonstrate willful
24 infringement of Plaintiff's Marks. For example, Defendants knew of Plaintiff and Plaintiff's
25 Marks, including Impossible Foods's prior use of its Marks with edible products, during the
26 parties' dispute, including the opposition Defendant Impossible LLC initiated with the United
27 States Patent and Trademark Office in November 2020. Notwithstanding this history and
28 knowledge, Defendants are using IMPOSSIBLE-formative marks with edible products and intend

1 to offer additional edible products in a manner that encroaches on Impossible Foods's superior
2 rights.

3 **FIRST SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 13**

4 In accordance with the foregoing objections, Impossible Foods states that Defendants,
5 including Mr. Runyon, acted affirmatively or by way of omission in ways that demonstrate willful
6 infringement of Plaintiff's Marks. For example, Defendants had actual knowledge of Plaintiff,
7 Plaintiff's Marks, and Plaintiff's use of its Marks with edible products, including edible protein
8 products, at least as early as November 2017 (*see, e.g.*, Bates No. IMP000001166). Defendants
9 further demonstrated knowledge of Plaintiff's prior use of its Marks with edible products through
10 the opposition initiated by Defendants with the United States Patent and Trademark Office
11 ("USPTO") in November 2020. Notwithstanding this history and prior knowledge, Defendants
12 sought to use IMPOSSIBLE-formative marks with edible products, including sleep and energy
13 powders, between April and July 2021 (*see, e.g.*, Bates Nos. IMP00051282, IMP00049571) in a
14 manner that encroaches on Plaintiff's superior rights, after this present litigation began and well
15 after Defendants first learned of Plaintiff's business and prior use of its Marks with edible
16 products.

17 In July 2021—four years after showing its familiarity with Plaintiff's prior use of its Marks
18 in connection with edible protein products, eight months after filing its opposition with the
19 USPTO, and three months after this litigation began—Defendants sought to encroach into the
20 edible products space by developing plans to start using IMPOSSIBLE-formative marks with
21 edible whey protein powder (*see, e.g.*, Bates No. IMP00039930). In April 2022—a year after this
22 litigation commenced—Defendants began offering for sale the first of their edible products,
23 Impossible Sleep (*see, e.g.*, Bates No. IMP00004817).

24 **INTERROGATORY NO. 14**

25 Provide a computation of each category of damages claimed by Plaintiff in this action.

26 **RESPONSE:**

27 Impossible Foods objects to this Interrogatory on the ground that it is premature as
28 discovery is ongoing and Impossible Foods may become aware of additional relevant documents

1 or information currently in Defendants' possession, custody, and control. Impossible Foods further
2 objects to this Interrogatory on the ground that it is premature as it calls for expert testimony.
3 Impossible Foods also objects to this Interrogatory on the ground that it seeks information
4 protected from discovery by the attorney-client privilege and the work product doctrine.

5 In accordance with these objections, Impossible Foods states that it currently seeks
6 recovery of compensatory, punitive, and enhanced damages, costs, and attorneys' fees.
7 Impossible Foods will supplement its disclosures with more precise computations when
8 appropriate under Rule 26(e) and after Defendants have produced relevant documents.

9 **FIRST SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 14:**

10 Impossible Foods supplements its prior response as follows: Impossible Foods currently
11 seeks permanent injunctive relief, Defendants' profits, damages, enhanced profits and damages,
12 costs, and reasonable attorneys' fees under 15 U.S.C. §§ 1114, 1116, 1117, 1125(a), and to the full
13 extent provided for by the common law of the State of California. The calculations of these awards
14 cannot be made at this time because much of the information and many of the documents
15 necessary to calculate them is within the possession, custody, or control of Defendants and have
16 not yet been provided in discovery. Moreover, Impossible Foods intends to rely on expert
17 testimony with regard to the calculation of its monetary awards, and expert reports are not yet due
18 under the Scheduling Order. At this time, therefore, Impossible Foods notes that it seeks an
19 accounting and disgorgement of all profits Defendants received from the sales of the Accused
20 Products; Impossible Foods also seeks damages as measured by a reasonable royalty, lost profits,
21 and corrective advertising; and Impossible Foods seeks punitive damages in an amount to be
22 awarded by and in the discretion of the jury. Impossible Foods will supplement its disclosures
23 with more precise computations when appropriate under Rule 26(e) after Defendants have
24 produced relevant documents, and when expert disclosures are due.

CONTAINS HIGHLY CONFIDENTIAL INFORMATION

DATED: March 5, 2025

By: /s/ H. Forrest Flemming

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IMPOSSIBLE FOODS INC.

CONTAINS HIGHLY CONFIDENTIAL INFORMATION

CERTIFICATE OF SERVICE

I hereby certify that on March 5, 2025, a true and correct copy of IMPOSSIBLE FOODS INC.'S THIRD SUPPLEMENTAL OBJECTIONS AND RESPONSES TO IMPOSSIBLE LLC'S SECOND SET OF INTERROGATORIES was served via electronic mail on counsel for Defendants Impossible LLC and Joel Runyon, addressed as follows:

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IMPOSSIBLE FOODS INC.

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IMPOSSIBLE FOODS INC., a Delaware
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Plaintiff/Counter-Defendant

v.

IMPOSSIBLE LLC, a Texas limited liability
company, and JOEL RUNYON,

Defendants/Counter-Plaintiffs.

Case No. 5:21-cv-02419-BLF (SVK)

VERIFICATION

I, Caitlyn Hatman, am duly authorized to verify the interrogatory responses contained in the foregoing **IMPOSSIBLE FOODS INC.'S THIRD SUPPLEMENTAL OBJECTIONS AND RESPONSES TO IMPOSSIBLE LLC'S SECOND SET OF INTERROGATORIES** on behalf of Plaintiff Impossible Foods Inc. ("Impossible Foods"). I have read the foregoing

responses, which were prepared with the assistance and advice of others. The responses are limited by the records and information maintained by Impossible Foods to the extent these records and information have thus far been discovered after a reasonable search in the course of preparing responses to the interrogatories. Subject to these limitations, the responses are true to the best of my knowledge, information, and belief.

I declare under penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct.

Executed this 28th day of March, 2025.

By: /s/ Caitlyn Hatman
Caitlyn Hatman
Director of Marketing
Impossible Foods Inc.